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5 Attorneys for Trudy A. Nowak, Chapter 7 Trustee

6 IN THE UNITED STATES BANKRUPTCY COURT
7 FOR THE DISTRICT OF ARIZONA

8 In Re:

9 Alexander William Garcia and Jennifer
Ann Garcia,

10 Debtor(s).

) Case No. 4:09-bk-24847-JMM

) Chapter 7

) **TRUSTEE'S MOTION TO COMPEL**
) **TURNOVER BY DEBTOR(S)**
)

12
13 Trudy A. Nowak, Chapter 7 trustee herein ("Trustee"), respectfully requests an order
14 of this Court pursuant to 11 U.S.C. §§ 521, 541, and 542 directing and compelling
15 Alexander William Garcia and Jennifer Ann Garcia, the debtor(s) herein ("Debtor(s)") to
16 turn over to Trustee certain books, records, papers and/or assets required by the Trustee to
17 properly administer this estate. Trustee's motion is as follows:

18 1. Debtor(s) filed a Voluntary Chapter 7 Petition on October 2, 2009 ("Filing
19 Date").

20 2. Pursuant to 11 U.S.C. §521, Debtor(s) is/are required to cooperate with the
21 Trustee as necessary to enable the Trustee to perform the Trustee's duties under the

1 Bankruptcy Code and surrender to the Trustee all property of the estate and any recorded
2 documentation and information, including books, documents, records, and papers, relating to
3 property of the estate. Debtor(s) is/are also required to cooperate with Trustee and provide
4 information and explanations regarding their case.

5 3. On March 5, 2010 the Trustee, through counsel, requested certain books,
6 records and papers regarding Debtors' interests and operations of an unincorporated business
7 know as the "Alex Garcia Agency" ("Agency"). Debtor responded and provided partial
8 records, agreements and documents regarding Agency.

9 4. Pursuant to 11 U.S.C. §541(a)(1), the bankruptcy estate is comprised of all
10 legal or equitable interests of the debtor in property as of the commencement of the case.

11 5. Pursuant to 11 U.S.C. §542, all persons in possession of estate assets are
12 required to turn over those assets or the value of those assets to the Trustee.

13 6. Agency is an insurance sales agency owned and operated as a DBA by Debtor
14 Alex Garcia. Part of the records and books turned over by Debtors, included an Exclusive
15 Agency Agreement between Alex W. Garcia and Allstate Insurance Company ("Allstate")
16 dated May 1, 2007 ("Agreement"). Under the Agreement, Debtor is entitled to and receives
17 commission payments from Allstate from the sale of insurance policies.

18 7. Under the Agreement, the Debtor also receives specifically denominated
19 monthly payments for the renewal of insurance policies sold by the debtor pre-petition
20 ("Renewal Commissions"). These commissions are paid separately from those commissions
21 paid to the Debtor for the sale of new insurance policies.

1 8. Under the Agreement Debtor is not classified as an employee of Allstate, but
2 rather the Agreement establishes an independent contractor relationship between Debtor and
3 Allstate.

4 9. The renewal commissions are properly part of the Bankruptcy Estate and
5 should be turned over to the Trustee. It has been determined that renewal commissions for
6 the sale of insurance policies which are received by the Debtor post petition, but which are
7 the result of pre-petition sales activities are properly part of the Estate and recoverable by the
8 Trustee. *In Re: Palmer*, 167 B.R. 579 (Bkrtcy.D.Ariz., 1994). Additionally, the payment of
9 commissions has been deemed to not be subject to any wage exemption. *In Re: Ozworth*,
10 234 B.R. 497 (9th Cir BAP 1999) (considering an Oregon wage garnishment exemption
11 statute that is nearly identical to the Arizona exemption statute, A.R.S. §33-1131, and real
12 estate commissions earned pre-petition and paid post-petition). Trustee respectfully submits
13 the instance cases analogous and that the pre-petition Renewal Commissions earned by
14 Debtor are properly part of the Estate and not subject to any exemption.

15 10. In addition to the Agreement, Debtor provided statements from Allstate
16 indicating the payment of monthly commission payments from Allstate for insurance
17 policies which were sold prior to the Filing Date. Debtors' records indicate that from
18 October 1, 2009 to March 31, 2010 Debtor received renewal commissions from Allstate
19 totaling \$68,868.53.

20 11. The statements provided by Debtor to the Trustee do not provide any
21 breakdown as to the policy upon which the renewal commissions are being paid.

Dated: July 13, 2010

/s/ Steven Napoles
Steven Napoles
Attorneys for the Trustee

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COPY of the foregoing EMAILED
on July 12, 2009, to:

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4